

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION NO. 18 OF 1996

For Approval of Signature :

Hon'ble MR. JUSTICE B.C. PATEL and Sd/-

MR. JUSTICE S.M. SONI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgments ? No
  2. To be referred to the Report or not ? No
  3. Whether Their Lordships wish to see the fair copy of the judgment ? No
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder ? No
  5. Whether it is to be circulated to the Civil Judge? No

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The Commissioner of Income-tax,  
Gujarat - III, Ahmedabad : Applicant

VERSUS

Lavnya Co.Op. Housing Soc. Ltd.,  
Vasna. : Respondent

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Appearance :

M/s M.R. Bhatt & Co., for the Applicant.

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Coram : B.C. Patel & S.M. Soni, JJ.  
Date of Decision : 20.06.1996

Oral Judgment : (Per B.C. Patel, J.)

The Revenue preferred an application before the Income-Tax Tribunal to refer the following question of law to this Court under Section 256 (1) of the Income Tax

Act, 1961 (hereinafter referred to as "the Act") :

"Whether, the Appellate Tribunal is right in law and on facts in deleting the addition of Rs.47,510/- being the receipt of premium of the transfer of plot of the society ?"

2. The Tribunal by a speaking order dated 21.8.1996 has rejected the application and hence, the Revenue has preferred this application.

2. The Tribunal rejected the application relying on the earlier decisions of the Tribunal as well as the decision rendered by this Court, reported in the case of CIT vs. Adarsh Co-operative Housing Society Ltd. (1995) 123 CTR (Gujarat) Page No. 425. Mr Thakore, learned counsel pointed out that the High Court of Judicature at Bombay has taken a contrary view. Relying on the decision of the Apex Court, reported in the case of D.B. Madan vs. C.I.T. (S.C), 192 I.T.R. Page No. 344, Mr Thakore submitted that if it is said that the case is not required to be referred, then it is not the correct view. The Apex Court has observed that -

".....It is always open to the High Court to follow its earlier decision and answer the question of law one way or the other according as whether the view taken in the earlier case commends itself to it or whether, in its opinion, that earlier view needs reconsideration. But it cannot always be said that, in all cases where a similar question of law had been answered in an earlier case in a particular way, an identical question of law arising in a later case would cease to be a referable one and, therefore, the course to be adopted is to reject a reference under Section 256 (2)".

3. After hearing Mr Thakore, we think it fit to allow the application, and more particularly, a different view as stated by him is taken by the Bombay High Court (216 I.T.R. Page No. 321).

4. The Tribunal is directed to state a case and refer the question as suggested by the applicant for the opinion of this Court. The Application stands allowed accordingly and Rule is made absolute with no order as to costs.

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